



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 9, 2010

Mr. R. Brooks Moore  
Assistant General Counsel  
Texas A&M University  
200 Technology Way, Ste 2079  
College Station, Texas 77845-3424

OR2010-13730

Dear Mr. Moore:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 392944.

Texas A&M University (the "university") received a request for any and all documents prepared by the firm Ernst & Young related to the university's considerations, options, and/or financial ramifications pertaining to potential athletic conference realignment; any contracts or correspondence authorizing Ernst & Young to perform the analysis and work described in the request; any information provided to Ernst & Young for use in the work described in the request; and any correspondence between the university and Ernst & Young concerning possible athletic conference realignment. You claim that the submitted information is excepted from disclosure under sections 552.104, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have not submitted information responsive to the portion of the request regarding contracts authorizing Ernst & Young to perform the work described in the request. To the extent any information responsive to this portion of the request existed on the date the university received the request, we assume the university has released it. If the university has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Next, we note some of the submitted information may have been the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2010-12894 (2010). We have no indication the law, facts, or circumstances on which this prior ruling was based have changed. Accordingly, with regard to the submitted

information that was previously requested and ruled on by this office, we conclude the university must continue to withhold or release that information in accordance with this prior ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the submitted information was not previously requested and ruled upon by this office, we will consider your arguments against disclosure.

We note the submitted information was responsive to two previous requests for information received by the university. One request asked for all documents regarding conference expansion and/or realignment dated between May 24, 2010 and the date of the request, June 15, 2010. The other request asked for communications between specified individuals relating to the university's existing or prospective athletic conference participation. With regard to both previous requests, the university requested rulings from this office but did not submit any documents. In response to these requests for rulings, this office issued Open Records Letter Nos. 2010-13007 (2010) and 2010-13010 (2010), both of which concluded the university must withhold or release information previously ruled on in Open Records Letter No. 2010-12894, but release any remaining responsive information because the university failed to submit such information to our office in accordance with section 552.301(e) of the Government Code. You now seek to withhold the submitted information, which we find responsive to these previous requests, under sections 552.104, 552.107, and 552.111 of the Government Code. Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential by law. *See* Gov't Code § 552.007. Accordingly, pursuant to section 552.007, the university may not now withhold the previously released information unless its release is expressly prohibited by law or the information is confidential by law. As noted above, you now raise sections 552.104, 552.107, and 552.111 for the submitted information we previously ordered released. Sections 552.104, 552.107, and 552.111 do not prohibit the release of information or make information confidential. *See* Open Records Decision Nos. 677 at 8 (2002) (attorney work product privilege under section 552.111 may be waived); 676 at 10-11 (2002) (attorney-client privilege under section 552.107(1) may be waived), 665 at 2 n.5 (discretionary exceptions generally), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 592 at 8 (1991) (statutory predecessor to section 552.104 subject to waiver), 470 at 7 (1987) (statutory predecessor to section 552.111 subject to waiver). Thus, we do not address your claims under sections 552.104, 552.107, and 552.111 of the Government Code. However, we note some of the submitted information may be subject to section 552.137 of the Government Code.<sup>1</sup> Because section 552.137 can

---

<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

provide a compelling reason to withhold information, we will consider the applicability of this exception to the submitted information.

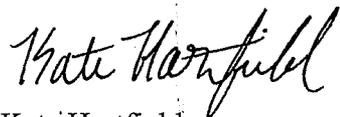
Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov't Code § 552.137(a)-(c). The e-mail addresses at issue are not specifically excluded by section 552.137(c). Therefore, the university must withhold the e-mail addresses we have marked under section 552.137, unless the university receives consent for their release.<sup>2</sup>

In summary, to the extent the submitted information was previously ruled on by this office, we conclude the university must continue to withhold or release that information in accordance with Open Records Letter No. 2010-12894. The university must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless it receives consent for their release. The remaining information must be released in accordance with Open Records Letter Nos. 2010-13007 and 2010-13010.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Kate Hartfield  
Assistant Attorney General  
Open Records Division

KH/em

---

<sup>2</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

Ref: ID# 392944

Enc. Submitted documents

c: Requestor  
(w/o enclosures)